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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,739	01/02/2002	John H. Hayes	2244/50474	6396

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Crowell & Moring, L.L.P.
P.O. Box 14300
Washington, DC 20044-4300

EXAMINER

CONLEY, FREDRICK C

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 08/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/032,739

Applicant(s)

HAYES, JOHN H.

Examiner

Fredrick C Conley

Art Unit

3673

[Signature]

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3673

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-36 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4, 7-8, 11-28, and 40-44 of U.S. Patent No. 6,725,485. Although the conflicting claims are not identical, they are not patentably distinct from each other because the elements recited in the claims of the instant application are also recited in the patent. Application is broader than patent and thus would be covered by the patent.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 21-23, 25, and 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,077,845 to Tokunaga.

In reference to claim 1, Tokunaga discloses a mattress system, comprising:
a mattress 4 having a top surface and a bottom surface;
a cavity 5 arranged in the mattress, the cavity being open at least toward the top surface and having a defined size; and
an expandable cushion (7a-d) arranged in the cavity.

Regarding claim 2, further comprising:
a control system 10 operatively coupled with the cushion to control an expansion and contraction of the cushion.

Regarding claim 21, wherein the control system comprises:
a fluidic pump 10a arranged to pump fluid into the expandable cushion;
a fluid relief mechanism 10b arranged to allow fluid to escape the expandable cushion; and a control switch 24 operatively coupled with the fluidic pump and relief mechanism to control expansion and contraction of the expandable cushion.

Art Unit: 3673

Regarding claim 22, wherein the fluid is air, the control switch controlling an inflation and deflation of the expandable cushion.

Regarding claim 23, wherein the fluid relief mechanism is a vacuum pump 10b.

Regarding claim 25, wherein the control switch is a remote control switch.

Regarding claim 27, wherein in an expanded state, a top surface of the cushion is substantially flush with the top surface of the mattress.

Regarding claim 28, wherein in an expanded state, a top surface of the cushion (7a,7b)(Tokunaga) is located below the top surface of the mattress, and further comprising a mattress-like product (7e), the mattress-like product filling a volume of the cavity between the top surface of the cushion in the expandable state and the top surface of the mattress.

Regarding claim 29, wherein the expandable cushion comprises a series of expandable chambers (7a-d).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-4 and 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,077,845 to Tokunaga in view of U.S. Pat. No. 4,011,610 to Parker.

Regarding claim 3, Tokunaga discloses all of the Applicant's claimed limitations except for a mattress protector covering at least the top surface of the mattress, the protector including a portion that extends into the cavity. Parker discloses a mattress system having a mattress protector 34 covering at least the top surface of the mattress, the protector including a portion that extends into the cavity (col. 2 lines 1-10). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a mattress protector with the mattress of Tokunaga in order to enclose the mattress.

Regarding claim 4, further comprising:

a retainer (col. 3 lines 22-25) arranged in the mattress between the top and bottom surfaces on a periphery of the cavity, the retainer being configured to secure a periphery of the portion of the mattress protector that extends into the cavity (col. 2 lines 39-43)(Parker).

Regarding claim 7, further comprising:

a bedsheet 30 adapted to fit over at least the top surface of the mattress
(Parker).

Regarding claim 8, wherein the bed sheet has an opening located to correspond with the cavity in the mattress to allow access thereto (Parker).

Regarding claim 9, wherein the opening is one of a fly opening and a slit with a flap opening (fig. 10a, 10c).

Regarding claim 10, further comprising:

an underpad 26 adapted to be placed on top of the bedsheet and including a portion that extends into the cavity and over the expandable cushion arranged in the cavity (Parker).

Regarding claim 11, wherein the expandable cushion is an inflatable cushion, the control unit 10 operating to inflate and deflate the cushion to raise and lower the cushion within the cavity (Tokunaga).

Regarding claim 12, wherein the inflatable cushion includes an elastic material at least on sides of the cushion, the elastic material/rubber being configured to stretch when the cushion is inflated and contract the cushion to a defined size when deflated (Tokunaga).

Art Unit: 3673

Claims 24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,077,845 to Tokunaga in view of U.S. Pat. No 5,142,717 to Everard et al.

In reference to claims 24 and 26, Tokunaga discloses all of the Applicant's claimed limitations except for the expandable cushion filled with a foam material and the control system coupled to a spring device. Everard discloses an expandable cushion filled with foam 20 and the control system coupled to a spring device 27. It would have been obvious to one having ordinary skill in the art at the time of the invention to fill the cushion with foam and couple the control system with a spring device in order to support a person and prevent load deflection.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fredrick C Conley whose telephone number is 308-7468. The examiner can normally be reached on m-th m-fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC 


TERI PHAM LUU
PRIMARY EXAMINER